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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/677,869

10/02/2003

Brian K. Fuller

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EXAMINER

BAREFORD, KATHERINE A

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/677,869	Applicant(s) FULLER ET AL.	
	Examiner Katherine A. Bareford	Art Unit 1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Claims 9 and 17 are canceled

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☐ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application |
| 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) ☐ Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on August 29, 2006 has been entered.

The Examiner further notes that the RCE submission was accompanied by an amendment and a request for a 1-month Suspension of Action, which suspended action until September 29, 2006. The declarations under 1.132 filed September 22, 2006 have been further received and considered.

With the filing of the amendment, claims 9 and 17 are canceled, and claims 1-8 and 10-16 are pending for examination.

Claims

2. The Examiner understands "kinetically sprayed" surface or coatings as used in the claims to be a coating or surface sprayed by a process as described in paragraph

[0016] of the specification and as further described in paragraphs [0003] – [0006] of the specification.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-8 and 10-16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 9, 14, 15, and 17 of U.S. Patent No. 6,743,468 (Fuller et al) in view of the admitted state of the prior art.

Although the conflicting claims are not identical, they are not patentably distinct from each other because Fuller provides in the claims that a kinetically sprayed surface can be applied to a substrate followed by a thermally sprayed overcoating (see claim 14, for

example). Although the claims of Fuller do not specifically teach that the kinetically sprayed coating has defects or the specific thermal spray process used, it is the Examiner's position that these would have been obvious to one of ordinary skill in the art, as the admitted state of the prior art (paragraph [0007] of the specification) teaches that it is well known that kinetic spraying commonly results in defects on the applied surface. The thermally sprayed coating would inherently fill defects in the first layer by its application of molten material. As to the listed thermal spray processes of the present claims, one skilled in the art of coating would know that the listed thermal spray processes of the present claims are conventional thermal spray processes that would be expected to provide desirable thermal spray coatings when a thermal spray process is to be used. As to present claims 2 and 11, claim 17 of Fuller provides choosing particles that can be the same. As to present claims 3 and 12, claims 4 and 9 of Fuller provide that different materials can be used. As to present claims 4 and 10, claim 15 of Fuller further provides that a kinetic spray layer can desirably be provided over a thermal spray layer as well. As to present claims 5 and 13, the admitted state of the prior art teaches that kinetic spray coating thicknesses are commonly more than 5 mm in thickness (paragraph [0007]). As to present claims 6 and 14, the admitted state of the prior art teaches that the defects in the kinetic sprayed coating are commonly conical (paragraph [0007]). As to present claims 7 and 15, claim 17 of Fuller provides that metal or alloy particles can be used. As to present claims 8 and 16, claim 17 of Fuller provides

that alloy particles can be used, and it is the Examiner's position that it is well known in the art of thermal spraying to spray nickel and copper alloys.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2, 4, 6, 7, 10, 11, 14 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Fuller et al (US 6743468)

The applied reference has a common inventor (Brian K. Fuller) with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim 1: Fuller teaches a method of repairing a defect in a kinetically sprayed surface. *Column 7, lines 35-65.* A kinetically sprayed surface having a defect in the surface is provided. *Column 7, lines 55-60.* The kinetically sprayed surface is formed from particles maintained at a temperature below their melting temperature during kinetic spraying. *Column 6, lines 5-30.* The defect can be caused by kinetic spraying. *Column 7, lines 35-45 and 55-60.* A repair coating is applied to the defect by thermally spraying a molten material on the defect. *Column 7, lines 5-15 and 55-65.* This thermal spray coating fills and repairs the defect. *Column 7, lines 55-60.* The thermal spray process can be an air plasma thermal spray process. *Column 6, lines 5-15 and column 7, lines 25-35 (as the "air heater 32" can comprise a "plasma thermal heater", the provided thermal spray process will be an "air plasma thermal spray process").* The thermal spray process can also be a high velocity oxy-fuel combustion thermal spray process as claimed, because the heater can also be a "combustion chamber", which in combination with the provided de Laval supersonic nozzle would provide the required structure for a high velocity oxy-fuel combustion thermal spray process. *Column 7, lines 25-27 (the "combustion chamber" and column 4, lines 5-10 (as to the de Laval supersonic nozzle).*

Claim 2, 11: the molten material is formed from the same material as the kinetically sprayed surface. *Column 7, lines 35-65 (as the gun is just oscillated from one spray type to the other).*

Claim 4, 10: an additional kinetically sprayed coating can be applied over the thermally sprayed once molten material. *Column 7, lines 55-65.*

Claim 6, 14: the defect can comprise at least one conical defect. *Column 7, lines 49-45.*

Claim 7, 15: the molten material can be a metal or alloy. *Column 6, line 60 through column 7, line 5.*

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-4, 6-8, 10-12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brogan (US 2002/0110682).

Claim 1: Brogan teaches a method of repairing a defect in a surface which can be a kinetically sprayed surface. *Paragraphs [0029] and [0069] – [0070]*. A possibly kinetically sprayed surface having a defect in the surface is provided. *Paragraphs [0029] and [0069] – [0070] (the initial surface can be applied by kinetic spraying (cold gas dynamic spraying is another term for kinetic spraying – note paragraph [0003] of the present specification))*. The kinetically sprayed surface is formed from particles maintained at a temperature below their melting temperature during kinetic spraying. *By the definition of “cold gas dynamic spraying”/“kinetic” spraying – note paragraph [0003] of the present specification*. A repair coating is applied to the defect by a process that can be thermally spraying a molten material on the defect. *Paragraphs [0029] – [0030] and [0069] – [0070] (the repair coating can be applied by a thermal spraying process such as plasma spraying or flame spraying which would melt the particles)*. This thermal spray coating fills and repairs the defect. *Paragraphs [0029] and [0069] – [0070]*. The thermal spray process can include a flame spray process, high velocity oxy fuel spraying process, etc. *Paragraph [0029]*.

Claims 2, 11: the molten material is formed from the same material as the kinetically sprayed surface. *Paragraphs [0069] – [0070] (since the surface is restored)*.

Claims 7, 8, 15, 16: the molten material can contain, and thus comprise, a metal, copper. *Paragraph [0051] (copper can be in the coating)*.

Brogan teaches all the features of these claims except (1) the use of different material than that kinetically sprayed for the molten material (claims 3, 12), (2) the additional kinetically sprayed coating (claims 4, 10, 11, 15-17), (3) the conical defect (claims 6, 14), and (4) that the defects were caused by the kinetic spraying (claims 1, 10).

However, Brogan does teach repairing a defect in a surface which can be a kinetically sprayed surface. *Paragraphs [0029] and [0069] – [0070]*.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Brogan to use (1) different molten materials for repair with an expectation of desirable coating results, because Brogan teaches that a polymer/aggregate mixture is sprayed to repair the coating, and Brogan teaches a variety of such materials that can be used for different needs (*see paragraphs [0008], [0044] – [0057]*), and thus one of ordinary skill in the art would be suggested to perform routine experimentation to optimize the materials used from the selection given. (2) It would further have been obvious to modify Brogan to further apply an additional kinetically sprayed coating over the thermal spray coating to provide further repair of the coating, because the thermal spray coating would, in time, need to be repaired again after the first repair, due to reuse and rewear occurring as occurs with the initial coating to be repaired, and since Brogan teaches a repair method, one of ordinary skill in the art would be suggested to use the repair method of Brogan again, and Brogan teaches that one of the methods that can be used for repair is kinetic spraying. (3), (4) It would further have been obvious to modify Brogan to repair a conical defect or other defect

caused by the kinetic spraying process itself with an expectation of providing a desirably repaired coating, because Brogan teaches to repair a worn down and defective coating in general by recoating where the defects are caused by impact, wear or abrasion processes by remelting and thermally spraying coating that coalesces with the old coating and conical defects or other kinetic spraying defects in the coating would be obviously corrected by the same process, because the remelting and thermal spraying process described would repair any defect that requires newly applied coating, including conical or other kinetic spraying defects.

10. Claims 1-4, 6-8, 10-12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brogan (US 2002/0110682) in view of the admitted state of the prior art.

Claim 1: Brogan teaches a method of repairing a defect in a surface which can be a kinetically sprayed surface. *Paragraphs [0029] and [0069] – [0070]*. A possibly kinetically sprayed surface having a defect in the surface is provided. *Paragraphs [0029] and [0069] – [0070] (the initial surface can be applied by kinetic spraying (cold gas dynamic spraying is another term for kinetic spraying – note paragraph [0003] of the present specification))*. The kinetically sprayed surface is formed from particles maintained at a temperature below their melting temperature during kinetic spraying. *By the definition of “cold gas dynamic spraying”/“kinetic” spraying – note paragraph [0003] of the present specification*. A repair coating is applied to the defect by a process that can be thermally

spraying a molten material on the defect. *Paragraphs [0029] – [0030] and [0069] – [0070]* (the repair coating can be applied by a thermal spraying process such as plasma spraying or flame spraying which would melt the particles). This thermal spray coating fills and repairs the defect. *Paragraphs [0029] and [0069] – [0070]*. The thermal spray process can include a flame spray process, high velocity oxy fuel spraying process, etc. *Paragraph [0029]*.

Claims 2, 11: the molten material is formed from the same material as the kinetically sprayed surface. *Paragraphs [0069] – [0070]* (since the surface is restored).

Claims 7, 8, 15, 16: the molten material can contain, and thus comprise, a metal, copper. *Paragraph [0051]* (copper can be in the coating).

Brogan teaches all the features of these claims except (1) the use of different material than that kinetically sprayed for the molten material (claims 3, 12), (2) the additional kinetically sprayed coating (claims 4, 10, 11, 15-17), (3) the conical defect (claims 6, 14), and (4) that the defects were caused by the kinetic spraying (claims 1, 10). However, Brogan does teach repairing a defect in a surface which can be a kinetically sprayed surface. *Paragraphs [0029] and [0069] – [0070]*.

The admitted state of the prior art, at paragraph [0007] of the specification, teaches that it is well known that when providing kinetically sprayed layers, defects, such as conically shaped defects, are commonly formed in the spraying process.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Brogan to use (1) different molten materials for repair with an expectation of desirable coating results, because Brogan teaches that a

polymer/aggregate mixture is sprayed to repair the coating, and Brogan teaches a variety of such materials that can be used for different needs (*see paragraphs [0008], [0044] – [0057]*), and thus one of ordinary skill in the art would be suggested to perform routine experimentation to optimize the materials used from the selection given. (2) It would further have been obvious to modify Brogan to further apply an additional kinetically sprayed coating over the thermal spray coating to provide further repair of the coating, because the thermal spray coating would, in time, need to be repaired again after the first repair, due to reuse and rewear occurring as occurs with the initial coating to be repaired, and since Brogan teaches a repair method, one of ordinary skill in the art would be suggested to use the repair method of Brogan again, and Brogan teaches that one of the methods that can be used for repair is kinetic spraying. (3), (4) It would further have been obvious to modify Brogan to repair a conical defect or other defect caused by the kinetic spraying process itself as suggested by the admitted state of the prior art with an expectation of providing a desirably repaired coating, because Brogan teaches to repair a worn down and defective coating in general by recoating where the defects are caused by impact, wear or abrasion processes by remelting and thermally spraying coating that coalesces with the old coating and conical defects or other kinetic spraying defects in the coating would be obviously corrected by the same process, because the remelting and thermal spraying process described would repair any defect that requires newly applied coating, including conical or other kinetic spraying defects,

and the admitted state of the prior art provides the teaching that such defects would commonly be present as a result of using kinetic spraying.

Response to Amendment

11. The declarations under 37 CFR 1.132 filed September 22, 2006 are insufficient to overcome the 35 USC 102(e) rejection of claims 1, 2, 4, 6, 7, 10, 11, 14 and 15 based upon Fuller as set forth above because:

As discussed in the 35 USC 102(e) rejection using Fuller, the rejection can be overcome by "a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131." Here applicant has provided three 37 CFR 1.132 declarations to show that the material was derived from the inventors of the present application. However, the material must also be "not claimed in the reference" and in this case the material is claimed in the reference as shown by the newly provided double patenting rejection using Fuller above. See also MPEP 2136.05,

"Therefore, when the unclaimed subject matter of a reference is applicant's own invention, applicant may overcome a prima facie case based on the patent, ** U.S. patent application publication>,< or international application publication, by showing that the disclosure is a description of applicant's own previous work." (emphasis added).

Response to Arguments

12. Applicant's arguments filed August 29, 2006 and declarations filed September 22, 2006 have been fully considered but they are not persuasive.

(1) As to the 35 USC 102 rejection using Fuller, applicant argues that the subject matter in Fuller that is relied on by the Examiner is actually the work of the inventors of the subject application, with provided 37 CFR 1.132 declarations. The Examiner has reviewed these arguments, however, the rejection is maintained. As discussed in paragraph 10 above, the declarations were not sufficient to overcome the rejection because the material in Fuller was also claimed, as shown by the newly provided double patenting rejection.

(2) As to the 35 USC 103 rejection using Brogan alone, applicant argues that even if kinetic spraying were properly determined by one skilled in the art to fall within Brogan's definition of thermal spraying, Brogan still does not teach using two different spraying processes, one to create the surface and one to repair the surface as required by claim 1. Applicant also argues that Brogan does not suggest repairing defects caused by one of the spraying processes. According to applicant, rather than having the kinetic sprayed coating repaired by the different thermal spraying process using molten material, Brogan suggests repairing the "thermally sprayed" coating 10 using the very same "thermal spraying" process that created the coating in the first place, and does not disclose, teach or suggest using a different process to apply the repair coating. Brogan,

applicant argues, never suggests creating a kinetically sprayed surface from particles maintained at a temperature below their melting temperature and repairing defects in the kinetically sprayed surface using a thermal spray process that utilizes molten material to fill the defect, and also fails to disclose repairing defects caused by kinetic spraying, as required by claim 1. Applicant argues that in creating a kinetically sprayed surface, the formation of a defect is not uncommon, but if the defect is not repaired, and kinetic spraying continued, the defect continues to expand and consumes a larger portion of the surface, and therefore it is desirable to repair the defect as soon as it is detected before continuing to spray. However, according to applicant Brogan was not faced with this problem, but rather with repairing non-skid surfaces once they became worn or damaged, and requires heating prior to applying the repair coating. According to applicant, while surface heating could be employed in some embodiments of the present invention, the invention of claim 1 does not require heating the kinetically sprayed surface at the defect to melt the surface in order for the repair coating to adhere. Applicant argues, therefore, that those skilled in the art, faced with the problems of defects caused by kinetic spraying would not be motivated to modify Brogan to repair defects caused by kinetic spraying. As to claim 10, applicant further argues as well as not providing the features of claim 1, Brogan is completely silent as to applying an additional kinetically sprayed surface over the repaired defect.

The Examiner has reviewed applicant's arguments, however, the rejection is maintained. As to the use of "kinetic spraying" by Brogan, the Examiner notes that the

Examiner's rejection using Brogan has been sustained by the Board of Appeals (decision June 29, 2006) along with the Examiner's position that Brogan describes "kinetic spraying" as claimed by applicant. As to the use of two different spraying processes, Brogan provides no limit as to what the repair "thermal spraying" process can be, merely describing it as "thermal spraying" (see paragraph [0070]). Thus, any one of the "thermal spray" processes (including kinetic spray) described in Brogan can be used to apply the initial coating and any one can be used to apply the repair coating. Brogan provides no limitation that the same type of coating must be used for repair. As to repairing defects caused by the kinetic spraying, the Examiner discussed the reasons why this was obvious in the rejection above, and also at pages 13-14 of the previous Examiner's Answer. The Board of Appeals, in their decision noted that they concurred with the Examiner's rationale as to this issue at page 6 of the Decision. As to applicant's arguments as to the desire to repair kinetic coating defects immediately, the Examiner notes that such is not claimed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Similarly, as to applicant's arguments that surface heating is not necessarily required in the present invention, such is not claimed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As to applicant's arguments that the additional kinetically sprayed layer of claim 10 is not taught by Brogan, the Examiner

notes that the suggestion of the further layer would be obvious because, the thermal spray coating would, in time, need to be repaired again after the first repair, due to reuse and rewear occurring as occurs with the initial coating to be repaired, and since Brogan teaches a repair method, one of ordinary skill in the art would be suggested to use the repair method of Brogan again, and Brogan teaches that one of the methods that can be used for repair is kinetic spraying. Brogan, again, provides no limitation as to what repair method can be selected from the "thermal spray" options listed, and thus it is entirely acceptable to select kinetic spray for a new repair process. As discussed by the Board of Appeals at page 7 of the Decision, applicant has made no showing of objective evidence of nonobviousness, such as unexpected results.

(3) As to the 35 USC 103 rejection using Brogan in view of the admitted state of the prior art, the Examiner has further provided this rejection to clarify the obviousness of defects due to the spraying.

Allowable Subject Matter

13. The indicated allowability of claims 5 and 13 (objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims) is withdrawn in view of the new double patenting rejection of the claims as described in the obviousness double patenting rejection above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine A. Bareford whose telephone number is (571) 272-1413. The examiner can normally be reached on M-F(6:00-3:30) with the First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications and for After Final communications.

Other inquiries can be directed to the Tech Center 1700 telephone number at (571) 272-1700.

Furthermore, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KATHERINE BAREFORD
PRIMARY EXAMINER